

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA

THE TRUSTEES OF PURDUE)	
UNIVERSITY,)	
)	
Plaintiff,)	
)	
v.)	1:21-cv-840
)	
WOLFSPEED, INC.,)	
)	
Defendant.)	

AMENDED JOINT RULE 26(f) REPORT¹

The Trustees of Purdue University ("Plaintiff" or "Purdue") and Wolfsped, Inc. ("Defendant" or "Wolfsped") hereby submit this Amended Joint Rule 26(f) Report for the Court's consideration. The previously adopted case schedule, (see Doc. 45), is included below as Appendix A. The purpose of this Amended Joint Rule 26(f) Report is twofold: (1) to set forth the items from the Parties' prior Rule 26(f) Reports on which they reached agreement, (see Docs. 40, 42); and (2) to bring before the Court the Parties' Joint Local Rule 5.5 Report, (see Doc. 41).

1. **The Conference**. Pursuant to Federal Rule of Civil Procedure 26(f) and LR 16.1(b), a video conference meeting was held

¹ This court recently discovered that this order was not entered as a result of an oversight and the court apologizes for that. If circumstances have changed, the parties should file a notice with the court. The Markman Order will not be issued on or before July 5, however, the court is anticipating completion of the order sometime later this month.

on October 11, 2022. Michael Shore, Halima Ndai, John Lahad, Hayley Stillwell, Cooper Harrell, and Tyler Nullmeyer attended for Plaintiff; Richard Erwine, Jared Newton, and Peter Siddoway attended for Defendant. In an effort to frame a proper discovery plan, counsel for the parties discussed the case generally, including the parties' respective positions on the merits of the claims, scheduling, and an appropriate discovery plan. The Parties were unable to reach agreement on two discreet issues: (1) the appointment of a special master, and (2) the timing and scope of the claim construction process. For this reason, the Local Rules required that they submit separate Rule 26(f) Reports. However, apart from these two issues, the Parties were able to reach agreement and their respective Rule 26(f) Reports were virtually identical.

At the Rule 26(f) Conference before Judge William L. Osteen, Jr., the Parties were able to reach agreement on a proposed case schedule that resolved their dispute regarding the claim construction process. The Court further noted that it was not prepared to appoint a special master at this time. The Court asked the Parties to reduce the agreed-upon case schedule to writing and file it for the Court's consideration and approval. On November 2, 2022, the Court entered an Order adopting the Parties' proposed joint case schedule (Doc. 45). The approved case schedule is set forth below as Appendix A. The Portions of the Parties' Rule 26(f)

Reports on which they reached agreement are set forth herein.

2. **Discovery Plan**. The parties propose to the Court the following discovery plan:

- a. Discovery Subjects. The parties anticipate that discovery will be needed on the issues of patent infringement, willful infringement, patent validity, patent enforceability, patent damages generally, and enhanced damages, as well as all claims, defenses, and any other damages alleged in the action by any party. The foregoing list is not meant to be exhaustive, and the parties reserve the right to seek discovery on additional subjects as appropriate.
- b. Case-Management Track. Discovery shall be placed on a case-management track as provided in LR 26.1. The parties agree the appropriate track for this case is "exceptional" with the stipulated modifications set forth herein.
- c. Completion of Discovery. The deadline for completion of discovery (general and expert), as well as other relevant deadlines, is set forth in Appendix A.
- d. Stipulated Discovery Modifications. Agreed modifications to the case management track:

- i. A limit of 10 fact witness depositions per side. Expert and third-party witnesses do not count toward this total.
- ii. Depositions of corporate witnesses pursuant to Federal Rule 30(b)(6) shall count as a single deposition for purposes of this limitation, regardless of the number of corporate representative witnesses a party designates to testify pursuant to Federal Rule 30(b)(6).
- iii. Expert depositions are permitted as necessary.
- iv. No deposition shall exceed 7 hours on the record, or 14 hours on the record if the deponent testifies in a foreign language and requires use of an interpreter or translator, without prior agreement by the parties or by order of the Court for good cause shown.
- e. Claim Construction Hearing. If the Court determines that a full Claim Construction Hearing ("CCH") is necessary, the parties agree that no fact witnesses will be permitted to testify. The parties shall meet and confer to determine whether they can reach agreement on the need for live testimony by expert witnesses at the CCH. At least 14 days before the CCH, the parties will submit a report to the Court

either stating agreed terms for expert testimony (live, by declaration, or both) or setting forth any dispute for resolution.

f. Claim Construction Discovery. The parties agree that, if the Court finds a claim construction hearing necessary, depositions related to claim construction are limited to expert witnesses whose testimony is relied upon for the CCH. No additional limits on discovery related to claim construction are necessary. The parties shall meet, confer, and, at least 14 days before the CCH, submit a report to the Court stating their agreements or proposal(s) regarding the order of presentation at the CCH.

3. **Mediation**. Mediation will be conducted late in the discovery period, the exact date to be set by the mediator after consultation with the parties. James L. Lester has been appointed mediator in this matter. (See Doc. 52.)

4. **Preliminary Deposition Schedule**. The parties agree to cooperate with regard to the scheduling of depositions.

5. **Other Items**.

a. Magistrate Judge. The parties have discussed special procedures for managing this case, including reference of the case to a Magistrate Judge under 28 U.S.C. § 636(c). The parties do not consent to the reference of this case

to a Magistrate Judge.

b. Sealed Material. The parties agree that the case will involve confidential and sealed documents. The parties have separately filed a Joint LR 5.5 Report (see Doc. 41). The parties ask that the Court adopt their Joint LR 5.5 Report as part of its Order approving this Amended Joint Rule 26(f) Report.

c. Electronic Service. The parties agree that documents shall be served on counsel via electronic means (e.g., via the Court's ECF system, via email, or via a secured file transfer protocol (FTP)). If service is not possible via electronic means, then the serving party shall notify the receiving party at least three business days prior to the date required for service and arrange a means of service that assures the receiving party will receive materials on or before the date required for service. Service on counsel via electronic means shall constitute service pursuant to Federal Rule 5(b)(2)(E) for documents filed with the Court and for all other documents required to be served.

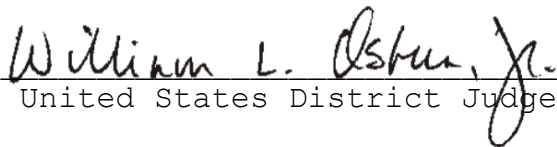
d. Privileges and Exemptions. Regarding privileges, discovery exemptions, and preventing inadvertent waivers under Fed. R. Evid. 502, the parties agree to follow the provisions of Paragraph 1.d. of the Delaware Default

Standard for Discovery, including Discovery of Electronically Stored Information.

e. ESI. The parties agree to work collaboratively and in good faith regarding the production of ESI.

6. **Trial**. The trial date and an estimated length of trial are included in the attached Appendix A.

This the 3rd day of July, 2023.


United States District Judge

APPENDIX A

Event	Local Rule	Proposed Deadline
Rule 26 Initial Disclosures	26.1	11/6/2022
Discovery (other than early Rule 34 Requests under Fed. R. Civ. P. 26(d)) Commences		10/31/2022
Plaintiff's Service of Disclosure of Asserted Claims and Preliminary Infringement Contentions	103.1, 103.2	11/15/2022
Serve Preliminary Patent Invalidity Contentions	103.3, 103.4	12/20/2022
Deadline to request leave to join additional parties or to amend pleadings		2/3/2023
Exchange of lists of proposed claim terms to be construed	104.1(a)	1/10/2023
Exchange preliminary proposed constructions of each claim term identified for claim construction; identify extrinsic evidence including witness testimony	104.2	1/31/2023
Joint Claim Construction Statement	104.3	2/17/2023
Claim Construction expert reports	104.3(b)	3/3/2023
Completion of all claim construction discovery, including depositions	104.4	3/17/2023
Opening claim construction briefs	104.5(a)	3/31/2023

Responsive claim construction briefs	104.5(b)	4/21/2023
Claim Construction Hearing	104.6	5/5/2023
Claim Construction Order		7/5/2023
Mediation Conference	16.4, 102.1	Within 60 days after the Court issues the Claim Construction Order
Fact Discovery Closes	26.1	9/8/2023
Disclose Experts and Serve Expert Reports on Issues on which Party Bears the Burden of Proof	105.1(b)	10/06/2023
Disclose Any Rebuttal Experts and Serve Expert Reports on Issues on which the Other Party Bears the Burden of Proof	105.1(c)	11/03/2023
Rebuttal Expert Witness Disclosures	105.1(d)	11/20/2023
Expert Deposition Period Commences	105.2	11/27/2023
Completion of Expert Deposition Period	105.2	12/15/2023
Summary Judgment Deadline	56.1(d)	1/15/2024
Pre-Trial Conference		8/1/2024-8/2/2024
Trial		8/5/2024 (two weeks)